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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. GARY MICHAEL ALLEN, Defendant and Appellant.	C069465 (Super. Ct. No. 11F03891)
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A jury found defendant Gary Michael Allen guilty of receiving a stolen motorcycle. In bifurcated proceedings, defendant admitted two prior prison term allegations. The court sentenced him to state prison for five years.

Defendant appeals, contending the trial court prejudicially erred in refusing to exclude his non-Mirandized¹ statements. Defendant argues that he was in custody and subject to express and direct questioning when he gave statements which provided circumstantial evidence of his knowledge that the motorcycle was

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

stolen and that without his statements, the evidence of his knowledge was limited to where and how the motorcycle was discovered. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

About 10:37 a.m. on May 30, 2011, Sacramento County Sheriff Deputies Craig Harmon and Erik Hobbs were investigating community complaints about narcotics trafficking and prostitution occurring at a duplex located in North Highlands. There were four or five people inside the duplex. While the officers were there, defendant approached the front door of the duplex. Outside the front door, Deputy Harmon asked defendant what he was doing there and whether he was on probation or parole. Defendant admitted that he was on parole. Deputy Harmon handcuffed defendant, conducted a parole search of defendant's person, and found a vehicle key and a two-inch knife. Defendant was detained. Because the knife could possibly constitute a violation of parole, Deputy Harmon decided that he and his partner would have to contact defendant's parole agent for a determination of whether to place a parole hold on defendant.

Deputy Harmon then asked defendant how he had arrived. Defendant first said that he had driven his truck. After pausing, defendant then said his girlfriend had "dropped him off." When the deputy asked about the vehicle key, defendant said the key belonged to his truck but that he had recently sold it. When the deputy asked these questions, he did not know that there was a vehicle at the scene that was associated with

defendant. Neither did he know that there was a stolen motorcycle in defendant's vehicle. The record does not reflect the duration of defendant's encounter with the deputy. At some point, after asking how defendant traveled to the scene, the deputy put defendant in the back of the patrol car.

Behind the duplex, Deputy Harmon found a truck which defendant admitted belonged to him. A DMV records check confirmed that the truck was registered to defendant. The deputies attempted to contact defendant's parole agent but because it was a holiday, they were "on hold for a long time." When Deputy Hobbs finally spoke with defendant's parole agent, Deputy Harmon was searching defendant's truck which revealed the stolen motorcycle. Defendant was arrested for receiving a stolen motorcycle.

At a hearing on the admissibility of defendant's statements, a trial court determined that defendant was in custody, having been placed in handcuffs and detained, and a reasonable person would believe that he was not free to leave: "I don't think there is any question that [defendant] was detained. He was in custody. And that was clear to me. [¶] But what the court's inquiring about is whether this was an interrogation."

Citing several cases including *Rhode Island v. Innis* (1980) 446 U.S. 291 [64 L.Ed.2d 297] (*Innis*), the trial court ruled defendant's statements were admissible, concluding defendant was not being interrogated when he gave his statements in that the questioning was not likely to elicit an incriminating response:

"In this case Officer Harmon testified that he observed the defendant with the key to a vehicle and that he did want to search the defendant's vehicle to determine if the vehicle contained contraband pursuant to his parole status; however, at the time of questioning the officer had no knowledge that the vehicle contained any contraband, and the officer had no reason to suspect that the vehicle contained contraband. The officer was simply going to conduct a search of the vehicle pursuant to the defendant's parole status, which he does in the normal course of duties.

"There is nothing about owning a vehicle that is incriminating. There is nothing about driving a vehicle that is incriminating. . . ."

DISCUSSION

The People do not dispute the trial court's finding defendant was in custody when these questions were asked. The trial court also found that defendant was not "interrogated." Defendant disputes this finding.

We agree that defendant was in custody because a reasonable person in defendant's circumstances would not have felt free to leave. Defendant was handcuffed just outside the front door of a duplex where officers were investigating community complaints about narcotics trafficking and prostitution. But we must determine whether these questions should have been excluded pursuant to *Miranda*.

"[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the

part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police." (*Innis, supra*, 446 U.S. at p. 301 [64 L.Ed.2d at p. 308], fns. omitted; see *People v. Thornton* (2007) 41 Cal.4th 391, 432.)

"Clearly, not all conversation between an officer and a suspect constitutes interrogation. The police may speak to a suspect in custody as long as the speech would not reasonably be construed as calling for an incriminating response."

[Citations.]" (*People v. Huggins* (2006) 38 Cal.4th 175, 198.)

Relying upon *United States v. Booth* (9th Cir. 1981) 669 F.2d 1231, defendant argues that the deputy's questions about his mode of transportation to the scene and what the vehicle key belonged to were express and direct questions that the deputy admitted asking in order to lead to other evidence to use against defendant (contraband, illegal items, stolen vehicle). We conclude that defendant was not "interrogated" such that his questioning required a *Miranda* admonition.

In *Booth*, three-and-one-half miles from the scene of a bank robbery which had occurred within the hour, a motorcycle officer saw the defendant who matched the description of one of the robbers. The officer stopped alongside the defendant who was walking on the sidewalk and asked to talk to him. Although finding no weapons after conducting a patdown, the officer

handcuffed the defendant and advised him that he matched the description of one of the robbers. While waiting for backup, the officer asked the defendant for his name, age, and address and the defendant gave his name, age and town where he resided. The officer also asked whether the defendant "had any identification, what he was doing in the area, and whether he had been arrested before." (*United States v. Booth, supra*, 669 F.2d at p. 1234.) The defendant responded that he "had no identification, that he was visiting friends in Portland, and that he had been paroled the month before from a prison term he received for a burglary that had taken place in Salem" where he lived. (*Ibid.*) The district court excluded the defendant's statements to the officer "regarding why he was in the area and whether he had previously been arrested." (*Id.* at p. 1235.)

The appellate court in *Booth* affirmed: "While it is a close call, we cannot say it was clearly erroneous to find that a reasonable police officer should have concluded that when asked his reason for being in the area, Booth would respond with an assertion--either a denial of complicity, an admission, or an alibi--that might later be used against him. Nothing, on the other hand, indicates that the questions relating to Booth's identity, age and residence were at all likely to elicit an incriminating response. These routine, non-investigatory questions were totally unrelated to the crime, and the record does not reveal that Booth was 'particularly susceptible' to this line of inquiry. Thus, while we need not decide the scope of possible questions that may be posed to a suspect in custody

absent the procedural safeguards required by *Miranda*, we conclude that the district judge did not err when he found that asking Booth his name, age and residence did not constitute interrogation." (*United States v. Booth, supra*, 669 F.2d at pp. 1238-1239.)

Defendant cites the following from *Booth*: "It is not sufficient, as the government contends, merely that a question is 'objective' or that it was not asked in an attempt to elicit evidence of crime. [Citation.] Even a relatively innocuous question may, in light of the unusual susceptibility of a particular suspect, be reasonably likely to elicit an incriminating response. [Citation.]" (*United States v. Booth, supra*, 669 F.2d at p. 1238.) *Booth* continued, however, stating, "On the other hand it is relevant, but not determinative, that a question posed was not related to the crime or the suspect's participation in it. Ordinarily, the routine gathering of background biographical data will not constitute interrogation." (*Ibid.*) And further stated, "The degree to which the questions are routine or involve matters unrelated to the crime will be important factors" in determining "whether the questioning was reasonably likely to elicit an incriminating response." (*Id.* at p. 1238, fn. 2.)

Here, the deputies were investigating community complaints about narcotic trafficking and prostitution at the duplex when defendant approached the front door. Defendant was a self-admitted parolee and one of his conditions of parole permits searches of his person and property without a warrant. (Pen.

Code, § 3067; *People v. Middleton* (2005) 131 Cal.App.4th 732, 739.) Deputy Harmon conducted a parole search of defendant's person, finding a small pocket knife and vehicle key. Deputy Harmon asked how defendant arrived at the location to determine whether there was a vehicle to search pursuant to defendant's parole search condition. While the intent of Deputy Harmon is relevant, he did not intend to elicit incriminatory statements from the defendant to be used against him. At the time, Deputy Harmon did not know there was a vehicle or that it contained a stolen motorcycle. Deputy Harmon's innocuous question did not call on defendant to confess that he had a stolen motorcycle in his truck or make any other inculpatory statement. Defendant responded that he drove his truck and then changed his story and said his girlfriend "dropped him off." The deputy then asked about defendant's vehicle key found on his person. Again, the question did not call on defendant to confess to the crime but sought clarification of defendant's answer since he had a vehicle key. Defendant claimed the key belonged to his truck but he had recently sold it.

Unlike the questions posed in *Booth* which exceeded the scope of routine questions, the deputy's questions here did not constitute interrogation -- the questions asked were routine questions an officer would ask given defendant's parole status, the vehicle key found on his person, and his search condition of parole. At the time of his questions, the deputy had no idea that defendant had committed a crime and did not know whether defendant's parole agent would want defendant held on a parole

violation for the small pocket knife. The questions were not designed to elicit incriminating responses but by chance certainly resulted in potentially incriminating responses. "[T]he police surely cannot be held accountable for the unforeseeable results of their words or actions." (*Innis, supra*, 446 U.S. at pp. 301-302 [64 L.Ed.2d at p. 308].) We conclude the trial court properly ruled that a *Miranda* admonition was not required in order to admit defendant's responses into evidence.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

HULL, Acting P. J.

DUARTE, J.